IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5590 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANJULABEN RAMKABHAI ADODIYA

Versus

DISTRICT MAGISTRATE BHAVNAGAR

Appearance:

MS JYOTSNA PATEL FOR HL PATEL ADVOCATES for Petitioner

MR KT DAVE ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/02/2000

ORAL JUDGEMENT

#. Heard learned advocate Ms.Jyotsna Patel, for M/s H.L.Patel Advocates on behalf of the petitioner and Mr.K.T. Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 6-7-1999 passed by respondent No. 1 - The District Magistrate, Bhavnagar against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present proceedings under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicate that the detenu was involved in 9 prohibition cases registered at Bhavnagar "B" Division Police Station in between from 4-1-1999 to 17-6-1999. That four cases out of said 9 cases are pending for trial in the court while the rest of the cases are pending for further investigation.

#. It also indicate that four witnesses on assurance of their anonymity have given their statement on 28-6-1999 and have referred to incidents alleged to have occurred on 25-6-1999, 15-6-99, 11-6-99 and 1-6-99 respectively. That on the basis of the said material, the respondent No. 1 - The District Magistrate, Bhavnagar as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing her prejudicial anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order suffers vice of non application of mind inasmuch as the detaining authority has failed to consider the status of the petitioner on the date of the passing of the impugned order as to whether the petitioner was in custody or released on bail. Furthermore, the aspect of claiming of cancellation of bail as available under Section 437(5) of CrPC has not been considered before passing the impugned order.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the

subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, it appears that from the grounds of detention that the detaining authority has failed to consider the status of the petitioner in respect to 9 cases registered against her and on which, the detention order is based. It has not been stated anywhere in the grounds of detention that whether the petitioner was on bail or in custody and if on bail, whether any attempt was made to claim cancellation of bail under Section 437(5) of CrPC. In view of the same, it is difficult to sustain the impugned order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 6-7-99 passed by respondent No. 1 - The District Magistrate, Bhavnagar against the petitioner is hereby quashed and set aside. The petitioner MANJULABEN RAMKABHAI ADODIYA is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 23-2-2000 [A.K.Trivedi, J.]

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